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GCIU-Employer Retirement Fund and  
Board of Trustees of the  
GCIU-Employer Retirement Fund

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

GCIU-EMPLOYER RETIREMENT FUND AND BOARD OF TRUSTEES OF THE GCIU-EMPLOYER RETIREMENT FUND Plaintiffs, v. THE KUTZTOWN PUBLISHING CO., INC., a Pennsylvania Corporation Defendant. ) CASE NO. 2:15-CV-8712 ) COMPLAINT ) Collection of Withdrawal Liability pursuant to ERISA § 4221(b)(1) (29 U.S.C. § 1401(b)(1)) )

## COMPLAINT

Plaintiffs, GCIU-Employer Retirement Fund and Board of Trustees of the GCIU-Employer Retirement Fund, for causes of action against Defendant, The Kutztown Publishing Co., Inc., allege as follows:

## **JURISDICTION AND VENUE**

1. This is an action for collection of withdrawal liability, interest, and attorneys' fees incurred by an employer as a result of a withdrawal from a multiemployer pension plan, which action arises under the Employee Retirement Income Security Act of 1974

1 (“ERISA”), as amended by the Multiemployer Pension Plan Amendments Act of 1980,  
2 29 U.S.C. § 1001 *et seq.*

3. This court has jurisdiction over this action under §§ 502(e), 502(f), and 4301(c)  
4 of ERISA, 29 U.S.C. §§ 1132(e), 1132(f), and 1451(c).

5. Venue lies in this Court under §§ 502(e)(2) and 4301(d) of ERISA, 29 U.S.C. §§  
6 1132(e)(2) and 1451(d), in that the GCIU-Employer Retirement Fund (“Fund”) is  
7 administered at its principal place of business in City of Industry, California.

8. **PARTIES**

9. Plaintiff Fund is a multiemployer pension plan within the meaning of §§ 3(37)  
10 and 4001(a)(3) of ERISA, 29 U.S.C. §§ 1002(37) and 1301(a)(3).

11. Plaintiff Board of Trustees of the GCIU-Employer Retirement Fund (“Board of  
12 Trustees”) is comprised of the present trustees who are the named fiduciaries of the  
13 Fund within the meaning of § 402(a) of ERISA, 29 U.S.C. § 1102(a), and is the plan  
14 sponsor of the Fund within the meaning of §§ 3(16)(B)(iii) and 4001(a)(10) of ERISA,  
15 29 U.S.C. §§ 1002(16)(B)(iii) and 1301(a)(10). The Board of Trustees administers the  
16 Fund at 13191 Crossroads Parkway North, Suite 205, City of Industry, California  
17 91746-3434.

18. Pursuant to §§ 502(a)(3) and 4301(a)(1) of ERISA, 29 U.S.C. §§ 1132(a)(3) and  
19 1451(a)(1), the Board of Trustees is authorized, as a named fiduciary, to bring this  
20 action on behalf of the Fund, its participants and beneficiaries for the purpose of  
21 collecting withdrawal liability. The Fund is also authorized to bring this action in its  
22 own name pursuant to a provision contained within Article VIII, Section 16 of the  
23 Fund’s Trust Agreement, which permits all legal actions to be prosecuted in the name  
24 of the Fund. A true and correct copy of the Fund’s Trust Agreement is attached hereto  
25 as Exhibit 1.

26. Defendant The Kutztown Publishing Co., Inc. (“Kutztown Publishing”) is a  
27 corporation organized under the laws of the State of Pennsylvania.

1 8. At all times relevant to this action, Defendant has been an “employer” as the  
2 term is defined by § 3(5) of ERISA, 29 U.S.C. § 1002(5), and was engaged in an  
3 industry affecting commerce, as defined by section 301(a) of the Labor-Management  
4 Relations Act, 29 U.S.C. § 185(a).

## CLAIM FOR RELIEF

### (Default on Payment Obligation for Withdrawal Liability)

7 9. Plaintiffs hereby reallege and incorporate each and every allegation made in  
8 paragraphs 1 through 8 of this Complaint as though fully set forth herein.

9       10. During all relevant times, Kutztown Publishing was bound by a collective  
10 bargaining agreement with Graphic Communications International Union Local 4-C  
11 under which it was required to make contributions to the Fund on behalf of its  
12 employees. A true and correct copy of the collective bargaining agreement is attached  
13 hereto as Exhibit 2.

14 11. Kutztown Publishing's obligation to contribute to the Plaintiff Fund ceased in  
15 2013 because it withdrew from participation in the Plaintiff Fund.

16 12. As a result, the Fund provided Defendant with a Notice of Complete Withdrawal  
17 Liability and Demand for Payment (“Notice and Demand”) dated December 9, 2014,  
18 pursuant to §§ 4202(2) and 4219(b)(1) of ERISA, 29 U.S.C. §§ 1382(2) and  
19 1399(b)(1). In accordance with ERISA and the Fund’s Withdrawal Liability  
20 Procedures, the Fund’s actuary determined that the withdrawal liability attributable to  
21 Defendant was \$3,498,657. The Notice and Demand included a detailed calculation of  
22 how the amount of the withdrawal liability assessment was calculated by the actuary.  
23 A true and correct copy of the Notice and Demand with the detailed calculations is  
24 attached hereto as Exhibit 3.

25 13. The Notice and Demand also provided Kutztown Publishing with a payment  
26 schedule for the withdrawal liability assessment in accordance with the requirements of  
27 ERISA § 4219(c), 29 U.S.C. § 1399(c). A copy of the payment schedule is labeled as  
28 exhibit 2 of Exhibit 3 attached hereto.

1 14. Kutztown Publishing failed to exercise its rights under § 4219(b)(2)(A) of  
2 ERISA, 29 U.S.C. § 1399(b)(2)(A), to ask the Trustees/plan sponsor to review the  
3 assessment, to identify any inaccuracies in the determination of the amount of the  
4 assessment, or to furnish any additional information to the Trustees/plan sponsor.

5 15. On July 30, 2015, the Fund provided via certified mail a Notice of Failure to Pay  
6 Withdrawal Liability and Demand for Cure (“Demand for Cure”) to Kutztown  
7 Publishing in accordance with § 4219(c)(5) of ERISA, 29 U.S.C. § 1399(c)(5). A true  
8 and correct copy of the Demand for Cure is attached hereto as Exhibit 4.

9 16. Subsequently, Kutztown Publishing did not timely initiate arbitration pursuant to  
10 § 4221(a)(1) of ERISA, 29 U.S.C. § 1401(a)(1). Consequently, the amounts demanded  
11 by the Fund are due and owing pursuant to § 4221(b)(1) of ERISA, 29 U.S.C. §  
12 1401(b)(1).

13 17. Kutztown Publishing have failed to make the required withdrawal liability  
14 payment(s) to the Fund and thus are in default within the meaning of § 4219(c)(5) of  
15 ERISA, 29 U.S.C. § 1399(c)(5).

16 WHEREFORE, Plaintiffs request the following relief:

17 A judgment against Defendant Kutztown Publishing, and on behalf of Plaintiffs,  
18 pursuant to § 4301(b) of ERISA, 29 U.S.C. § 1451(b), for:

19 (i) the past due withdrawal liability payment of \$3,498,657;  
20 (ii) interest at the prevailing market rate pursuant to § 4219(c)(6) of  
21 ERISA, 29 U.S.C. § 1399(c)(6), on the total amount of unpaid  
22 withdrawal liability due and owing from January 1, 2014 until paid;  
23 (iii) Plaintiffs’ reasonable attorneys’ fees and costs of the action; and  
24 (iv) such other legal and equitable relief as the Court deems appropriate.

25 Dated: November 6, 2015

/s/ Valentina S. Mindirgasova

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